

## Routine Minimal Effect Procedure

### Introduction

Part 515 of the National Food Security Act Manual (NFSAM), Fourth Edition, Amendment 4, February 2008, describes Minimal Effect (MW) exemptions to the “Swampbuster” provisions of the 1985 Farm Bill for agricultural conversions that may negatively but only minimally impact wetland functions and values.

#### A. Minimal Effect Evaluations Before Conversion Has Occurred

A minimal effect evaluation will be conducted when a USDA participant requests a minimal effect exemption [7 CFR Section 12.31(d)]. The minimal effect evaluation includes an assessment of the functional level of the wetland before project impacts, and an assessment of functional level after project completion. The functional assessment component of the evaluation will be based on site conditions and must be documented using approved functional assessment worksheets.

(2) The USDA participant must provide NRCS with the following information before the required site visit:

- Description of the proposed activity.
- Location of the proposed activity.
- Any existing restrictions on the property in question, such as easements or permit conditions.

#### B. Minimal Effect Evaluations After Conversion Has Occurred

If a person has converted a wetland and then seeks a determination where the effect of such conversion on wetland was minimal, the burden will be upon the person to demonstrate to the satisfaction of NRCS the effect was minimal [7 CFR Section 12.31 (d)]. If a wetland conversion has already occurred, NRCS will use the best available information to complete the functional assessment. The following information sources (not inclusive) should be considered:

- Current and previous site visits and documentation.
- Prior wetland determinations and/or delineations.
- State wetland mapping conventions.
- Interviews with landowner or others.
- Reference sites of the same hydrogeomorphic (HGM) class, subclass, and/or modifier.

The following procedure has been developed for South Carolina NRCS Resource Soil Scientist to rapidly evaluate the effects of a proposed conversion and determine whether or not its effects are minimal. Field Office personnel are responsible for gathering required information, providing results to the producer, completing an exemption agreement with the producer, appropriately recording the determination, and elevating some special requests for a State level review.

The “Routine Minimal Effect Procedure” is the simplest and quickest technical determination tool available. Proposed conversions that do not qualify for routine Minimal Effect approval

may be referred through the State Office to the State Resource Conservationist for review. The State Conservationist may request that appropriate technical staff and partner agencies conduct a more detailed wetland functional assessment, and then offer recommendations relative to approval of the request.

The Minimal Effect exemption may be used more than one time per tract. However, the cumulative impact of Minimal Effect exemptions on a tract **may not exceed 1 acre** without a requirement of mitigation. Mitigation is the replacement of lost wetland functions and values via wetland restoration or enhancement. NRCS may recommend mitigation for conversions of any size that impair or eliminate important wetland functions.

### **Instructions**

*Wetland Data Sheets:* Properly completed wetland data sheets should be relied on to document routine procedure criteria only when the data has been gathered from within the conversion site.

*Normal Circumstances and Typical Situations:* All vegetation and hydrology criteria must be evaluated based on normal circumstances and typical situations. *Normal circumstances* refer to the soil and hydrologic conditions that are normally present, without regard to vegetation. *Typical situations* refer to the presence of undisturbed natural vegetation.

*Reference Sites:* When normal circumstances or typical situations are not present, then a nearby reference site within the same soil type, landscape position, and general characteristics must be used to evaluate the disturbed site.

### **Procedure:**

1. Answer **YES** or **NO** for all rows on the following Functional Assessment Worksheets.
2. If **all** replies are **NO**
  - a. District Conservationist (DC) approves the exemption by completing a "Verification of Minimal Effect Exemption". The District Conservationist and the producer must sign the verification.
  - b. File the original completed verification and supporting documentation.
  - c. Provide applicant a copy of the completed verification, a revised NRCS-CPA-026E, and FSA aerial photocopy indicating the area is MW, and the appropriate letter explaining the determination and their appeal rights under the FSA.
  - d. Notify FSA of the exemption by providing a copy of NRCS-CPA-026E and

the aerial photocopy indicating the area is MW.

3. If **any** reply is **YES** for:
- a. **Cumulative Effect Determination** – Answer the three questions as they pertain to the proposed activities requested by the participant.
  - b. **Excluded Wetland Types** -- Exhibit important wetland functions and values that cannot be replaced in a reasonable amount of time through mitigation, therefore **NO** Minimal Effect, or Mitigation Exemptions will apply.
  - c. **Red Flag Conditions** -- Exhibit important wetland functions and values. Minimal Effect exemptions will normally not apply. However, exceptional circumstances may exist. Complete mitigation of impacts and project specific conditions will be required. Consult with the producer regarding the limitations on the exemption relative to their circumstances. If the producer wishes to proceed after consultation, elevate the request through the State Office to the attention of the State Resource Conservationist.
  - d. **Yellow Flag Conditions** -- Exhibit important wetland functions and values. Project specific conditions may apply to the conversion activity. Mitigation may be a requirement. Consult with the producer regarding potential limitations on the exemption relative to their circumstances. If the producer wishes to proceed after consultation, elevate the request through the State Office to the attention of the State Resource Conservationist.

Functional Assessment Worksheet

YES	NO	Cumulative Effect Determination
		Have minimal effect exemption(s) previously been approved for conversion of more than 1% of wetlands contiguous with the requested work site, regardless of tract boundaries? If <b>YES</b> , then Minimal Effect is not available. If <b>NO</b> , then proceed to next question.
		Have minimal effect exemption(s) previously been approved for conversion of more than 1 acre of wetlands on the tract? If <b>YES</b> , then Mitigation is required. Inform producer of limitation on exemption. Elevate request to State Resource Conservationist if producer wants to proceed. If <b>NO</b> , proceed to next question.
		Have minimal effect exemption(s) previously been approved for conversion of more than 0.33 acre of wetlands on the tract? If <b>YES</b> , then mitigation requirement will be considered. Inform producer of possible limitation on exemption. Elevate request to State Resource Conservationist if producer wants to proceed. If <b>NO</b> , then mitigation may not be a requirement unless a red flag or yellow flag is impacted.

YES	NO	Will any of the following Excluded Wetland Types be impacted by the manipulation?
		Wetlands flooded by lunar tide.
		Forested (mixed hardwood) floodplain wetlands.
		Natural stands of Swamp Tupelo or Blackgum ( <i>Nyssa sylvatica</i> var. <i>biflora</i> ) and Water Tupelo ( <i>Nyssa aquatic</i> ).
		Natural stands of Bald Cypress or Pond Cypress ( <i>Taxodium spp.</i> ).
		Carolina Bays with native vegetation.
		Longleaf Pine ( <i>Pinus palustras</i> ) savannas with native vegetation.
		Ephemeral wetlands with native vegetation.
		Sinkhole waters and associated wetlands.
		Bogs (non-alluvial wetlands) of the mountains and Piedmont.
		Wetland evergreen shrub bogs (Pocosins) on organic soil.

YES	NO	Will any Red Flag Conditions be impacted by the manipulation?
		Wetland provides habitat for state or federally listed Threatened, Endangered, or Candidate Species.
		Wetland provides habitat for state listed Species of Concern or rare community types.
		Wetland located within a watershed designated Outstanding Resource Water (ORW).
		Wetland manipulation will adversely affect a cultural resource of state or national significance.
		Wetland exhibits unique or rare ecological or geological features such that they are designated a State Natural Area or State Priority Natural Area.
		Wetland subject to prior restriction prohibiting manipulation of wetlands. Existing conservation easements, enrollment in a reserve program, and official cease and desist orders are some examples of prior restrictions.
		Inter-dunal wetlands.

YES	NO	Will any Yellow Flag Conditions be impacted by the manipulation?
		Manipulation would convert more than 0.33 acre of wetland.
		Wetland with over story vegetation dominated by Longleaf Pine ( <i>Pinus palustris</i> ) or Pond Pine ( <i>Pinus serotina</i> ).
		Wetland with oak species dominant in the tree, sapling and shrub stratum. Some example species include Overcup Oak, Swamp Chestnut Oak, Swamp Laurel Oak and Swamp White Oak. Refer to the wetland data sheet to determine dominant species.
		Wetland that forms a corridor connecting two or more areas of natural vegetation, regardless of width or length.
		Wetland flooded or ponded (regardless of depth) for longer than 14 consecutive days due to natural hydrologic processes, during the growing season in most years (50% chance or greater). <sup>1</sup>
		Springs and their contiguous wetlands.
		Wetlands in all counties designated Trout Waters.
		Manipulation of perennial stream, river, or natural lake, including channelized perennial streams and rivers.
		Manipulation site could be viewed from the waters of a river included in the South Carolina Natural and Scenic River System.

1 This condition is typically manifested by the presence of one or more of the following hydrology indicators: water marks, sediment deposits, drift deposits, algal mat or crust, inundation visible on aerial imagery, aquatic fauna and iron deposits. For a description of these indicators see Chapter 4, Wetland Hydrology Indicators, and Regional Supplement to the Corps of Engineers Wetland Delineation Manual, Atlantic and Gulf Coastal Plain Region (Version 2.0).

Date: \_\_\_\_\_ Property Owner: \_\_\_\_\_ Tenant: \_\_\_\_\_

County: \_\_\_\_\_ Farm No.: \_\_\_\_\_ Tract No.: \_\_\_\_\_ Field No.: \_\_\_\_\_

Acreeage of Wetland Manipulation: \_\_\_\_\_

## Verification of Minimal Effect Exemption

Using the "Routine Minimal Effect Procedure", the Natural Resources Conservation Service (NRCS) has determined the action of the above named person, with respect to wetland manipulations described on the attached sheets, will make possible production of an agricultural commodity. NRCS has determined that this action, individually and in connection with all other similar actions authorized by NRCS in the area, will have only a *minimal effect* on wetland functions and values in the area.

This verification is only valid for the purposes of the Wetland Conservation provisions of the 1985 Food Security Act, as amended.

Check One:

- NRCS will **NOT** provide technical assistance related to this conversion.
- NRCS will provide technical assistance related to this conversion.

The person has been informed of their responsibility to notify and obtain authorization of the U.S. Army Corps of Engineers, South Carolina Department of Health and Environmental Control, and any local regulatory authorities prior to manipulating the wetland.

This verification will be entered into the administrative record to document approval of the Minimal Effect exemption.

District Conservationist: \_\_\_\_\_ Date: \_\_\_\_\_

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**I accept the terms of this verification:**

Participant: \_\_\_\_\_ Date: \_\_\_\_\_

- File the original completed verification and supporting documentation. Provide applicant a copy of the completed verification, a revised NRCS-CPA-026E, and FSA aerial photocopy indicating the area is MW.
- Notify FSA of the exemption by providing a copy of NRCS-CPA-026E and the changed aerial photography.
- Forward a copy of the completed verification to the State Office. State Office should maintain a register of Minimal Effect exemptions.